IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5970 of 2004

For Approval and Signature:

THE HON'BLE MR.JUSTICE A.M.KAPADIA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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VISHNUBHAI JASHBHAI PATEL - Petitioner(s)

Versus

VALLABH VIDYANAGAR COMMERCIAL CO-OPERATIVE BANK LTD. - Respondent(s)

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Appearance :

MR BP MUNSHI for Petitioner No(s).: 1.

MR HM PARIKH for Respondent No(s).: 1.

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CORAM :THE HON'BLE MR.JUSTICE A.M.KAPADIA

Date : 22/06/2005

ORAL JUDGMENT

1. By filing instant petition under Articles 226 and 227 of the Constitution, the petitioner seeks to challenge the order dated 8.4.2004 recorded below application Ex.51 in Special Darkhast No.93 of 2002 by the learned Civil Judge (SD), Anand by which the application filed by the petitioner, to take back the passport bearing No. A-7570425 which was ordered to be deposited by the Court as security for the decretal dues of the respondent bank, has been rejected.

1. This Court has heard Mr. BP Munshi, learned advocate for the petitioner and Mr. HM Parikh, learned advocate for the respondent and perused the impugned order, the averments made in the memo of petition supported by the affidavit and the reply affidavit filed by the respondent.

1. The present proceedings are arising from Special Darkhast initiated by the respondent bank being Special Darkhast No. 93 of 2002 as there was outstanding dues of the bank against the petitioner. It appears that the petitioner had borrowed certain loan under six separate accounts from the respondent bank. As the petitioner failed to discharge his liability towards the bank, the bank instituted Arbitration suit before the Board of Nominees under the Gujarat Co-operative Societies Act, 1961 which came to be decreed. There was no challenge to the said decree and therefore the same has become final.

1. For execution of the said decree the bank obtained a recovery certificate from the Board of Nominees and moved the revenue authority to recover the outstanding amount from the petitioner as arrears of land revenue. Pending this proceeding, the respondent bank filed Special Darkhast No.93 of 2002 in the Court of learned Civil Judge (SD), Anand for execution of the said decree.

1. In the said Special Darkhast the respondent bank moved Application Ex.6 to confiscate the passport of the petitioner. According to the respondent bank, the petitioner could not be served because they were not present at the

given address and that the petitioner was likely to leave the country and to emigrate permanently abroad. The Court has issued bailable warrant upon the petitioner in the sum of Rs.2 lakhs to secure the presence of the petitioner in the Court on 16.11.2002. The petitioner could not furnish surety as ordered by the Court but produced his passport before the Court and therefore the Court has taken the said passport in its custody.

1. By filing application Ex.51 the petitioner has prayed to take back the said passport without depositing Rs. 2 lakhs as per the bailable warrant issued upon him by the Court.

1. The petitioner had earlier ventilated almost same grievance by filing Special Civil Application No. 15885 of 2003 which came to be dismissed by this Court vide order dated 23.2.2004 which has become final.

1. The learned trial Judge in the impugned order dated 8.4.2004 has observed that this Court has dismissed Special Civil Application No.15885 of 2003. Besides this the petitioner who is a defaulter of payment of the bank's dues cannot be permitted to take the passport back. If he is given the passport then he may leave the country and may not return. Therefore, there is no infirmity committed by the learned trial Judge in passing the impugned order.
2. Moreover, though this is a petition filed under Articles 226 and 227 of the Constitution of India, in substance it is a petition filed under Article 227 of the Constitution of India. In the case of **Sadhna Lodh v. National Insurance Company Ltd.,** (2003) 3 SCC 524 the Supreme Court has held that against interlocutory orders petition under Article 226 of the Constitution of India would not lie but petition under Article 227 of the Constitution of India would lie against the order passed by the lower court. It is also a settled proposition of law that powers under Article 227 of the Constitution of India is a supervisory jurisdiction.
3. It is settled principle of law that powers vested in Court under Article 227 of the Constitution of India is a supervisory jurisdiction. The High Court must confine itself

to the correcting of error of jurisdiction committed by the courts below and it cannot assume suo motu jurisdiction of appellate court and correct every mistake assumed to have been committed by the courts below. It is a review of the decision making process and not the decision itself. The High Court cannot reappreciate preliminary or perceptive facts found by the fact finding authority under the statute. The aforesaid proposition of law is laid down by the Apex Court in the case of (i) **Mohd. Yunus v. Mohd. Mustaqim and others**, AIR 1984 SC 38, (ii) **Khanna Improvement Trust v. Land Acquisition Tribunal and others** (1995) 2 SCC 557, (iii) **H.B. Gandhi v. M/s. Gopinath**, (1992) Supp. 2 SCC 312 and (iv) S**tate of Maharashtra v. Milind and others**, (2000) 1 SCC 4.

4. It is also required to be mentioned that the Supreme Court in the case of **Ouseph Mathai and others v. M. Abdul Khadir,** (2002) 1 SCC 319, has laid down the scope of the petition filed under Article 226 or 227 of the Constitution of India wherein the Supreme Court has held as under:

11. Applying the principle laid down by the Supreme Court in Ouseph Mathai's case (supra) to the facts of the present case, this is a petition filed under Article 227 of the Constitution of India which cannot be treated like an extension of a statutory appeal or revision.

1. Mr. Munshi, learned advocate for the petitioner could not demonstrate how the trial Court has committed jurisdictional error.
2. In aforesaid view of the matter, the petition lacks merit and deserves to be rejected.
3. For the foregoing reasons, the petition fails and accordingly it is rejected with no order as to costs. Rule is discharged.

(A.M. Kapadia, J.)

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